

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

STEVEN MULLINS,

Petitioner,

V.

STEVE SINCLAIR,

## Respondent.

CASE NO. C12-5204 RBL-JRC

ORDER GRANTING PETITIONER'S  
MOTION FOR AN EXTENSION OF  
TIME, DENYING PETITIONER'S  
MOTION TO HOLD THE PETITION IN  
ABEYANCE AND DIRECTING  
PETITIONER TO SHOW CAUSE

The District Court has referred this petition for a writ of habeas corpus to United States Magistrate Judge, J. Richard Creatura. The authority for the referral is 28 U.S.C. § 636(b) (1) (A) and (B), and local Magistrate Judge Rules MJR3 and MJR4. Petitioner seeks relief from a state conviction. The petition is filed pursuant to 28 U.S.C. § 2254.

Petitioner has two motions pending before the Court -- a motion to extend time (ECF No. 10) and a motion to stay this action and hold the petition in abeyance (ECF No. 13). The Court previously ordered petitioner to amend his petition to name a proper respondent. The Court gave petitioner until April 20, 2012, to comply with the order (ECF No. 8). Petitioner filed a timely motion to extend time on April 18, 2012 (ECF No. 10) and he filed a petition naming Steve

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PETITION IN ABEYANCE AND DIRECTING  
PETITIONER TO SHOW CAUSE - 1

1      Sinclair as the respondent on April 23, 2012 (ECF No. 14). The motion for an extension of time  
2      is granted and the Court will consider the amended petition.

3              Petitioner also asks the Court to stay this action and hold his petition in abeyance while  
4      he pursues a state personal restraint petition (ECF No. 13). Petitioner provides no argument  
5      showing cause for his failure to follow the normal rule requiring exhaustion prior to filing (ECF  
6      No. 13). A district court must stay a mixed petition only if: (1) petitioner has “good cause” for  
7      failure to exhaust the claims in state court; (2) the unexhausted claims are potentially  
8      meritorious; and (3) there is no indication that petitioner intentionally engaged in dilatory  
9      litigation tactics. Rhines v. Weber, 544 U.S. 269, 278 (2005); Jackson v. Roe, 425 F.3d 654, 661  
10     (9th Cir. 2005). In determining whether the petition should be stayed, the Court must also “be  
11     mindful that AEDPA aims to encourage the finality of sentences and to encourage petitioners to  
12     exhaust their claims in state court before filing in federal court.” Wooten v. Kirkland, 540 F.3d  
13     1019, 1024 (9th Cir. 2008), cert. denied, \_\_\_ U.S. \_\_\_, 129 S. Ct. 2771 (2009).

14              Petitioner has failed to show good cause for not exhausting his claims prior to filing this  
15      action and the motion to stay the action and hold the petition in abeyance is denied. Petitioner is  
16      ordered to show cause why this petition should not be dismissed prior to service. A response is  
17      due on or before June 8, 2012.

18              Dated this 10th day May, 2012.

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21              J. Richard Creatura  
22              United States Magistrate Judge  
23

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PETITIONER’S MOTION TO HOLD THE  
PETITION IN ABEYANCE AND DIRECTING  
PETITIONER TO SHOW CAUSE - 2